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# Our Supreme Court Holds

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may yet, just as state courts, have to ascertain common law points of first impression in the jurisdiction.

In conclusion, what is to be the "state law" where there are two or more appellate state courts in conflict in their decisions, and no State Supreme Court holding? When the supreme court decisions of the state are in conflict, the later decision is controlling on the federal court as expressing the present state law. Dayton and Michigan R. Co. v. Commission of Internal Revenue, 112 F. (2d) 627 (1940). It is submitted that the same method could be used in respect to intermediate appellate state courts, or possibly the law as determined by the state appellate court division in which the federal court in question is sitting could be used as the proper reference. In time, no doubt, the questions arising from the decision in the Erie Railroad Company case will be answered, as they come up before the United States Supreme Court, and the principal case is one helpful as a partial clarification of what is meant by "state law."

HALVOR L. HALVORSON, JR.
Third Year Law Student
University of North Dakota.

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## OUR SUPREME COURT HOLDS

In Christine Messersmith, Pltf. and Applt., vs. Leo R. Reilly et al., Defts. and Respts.

That a promissory note containing a provision to pay interest at a rate which is lawful at the time the note is executed is not rendered usurious by the execution of a subsequent supplementary contract agreeing to pay interest in excess of the lawful rate as consideration for the extension of the time of payment of the original note.

That in the absence of legislative intent showing the contrary, a statute is deemed to act prospectively only; and legislation reducing the rate of lawful interest which may be charged, enacted subsequent to the execution of a note providing for interest at a rate then valid, does not taint the promissory note with usury.

That where after the execution of a promissory note, providing for the payment of interest at a valid rate, a contract is made to pay interest at a usurious rate, the payments of interest under such second contract must be credited upon the principal; but the rate specified in the promissory note stands. Appeal from the judgment of the District Court of Stark County; Hon. Harvey J. Miller, Judge. AFFIRMED. Opinion of the Court by Burr, Ch. J.

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In State of North Dakota ex rel Reo L. Knauss, Petr., vs. Joseph Kohler, as Sheriff of Burleigh County, Respt.

That where a defendant has been convicted in a police magistrate's court of violating a city ordinance and sentenced to both fine and imprisonment, he may appeal to the district court from a judgment of conviction within ten days from the pronouncement of such judgment.

That where, in appealing from a police magistrate's court to a district court, the appellant files a notice of appeal which has not been served on the city attorney, and also files an undertaking on appeal limited in amount

which is approved by the magistrate and then certifies the record to the district court and release the appellant from custody, the magistrate may not ignore the appeal thus pending and remand the appellant to custody.

Original application for Writ of Habeas Corpus by Reo L. Knauss, Petitioner entitled to Writ. Opinion of the Court by Morris, J.

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In the Federal Land Bank of St. Paul, a body corporate, Pltf. and Applt., vs. Bismarck Lumber Company, a corporation, et al., Defts. and Respts.

That the tax imposed by the State Sales Tax Act (Chapter 249, Session Laws 1937) is laid upon the buyer and not upon the seller. Jewel Tea Company vs. State Tax Commissioner, 70 N. D. —, 293 N. D. 386.

That the entire power of taxation abides in the states and except as restrained by the Constitution of the United States, the power of the states to tax is absolute.

That the test as to whether a tax laid on a federal instrumentality is constitutional and valid, is, does it hinder or embarrass the instrumentality in the performance of its governmental functions. If it does not, it is valid.

That the tax laid under the State Sales Tax (chapter 249, S. L. 1937) on sales to a federal land bank of lumber and other building material to be used in the conservation and repair of buildings and fences on farm lands acquired by the bank through the foreclosure of mortgages securing farm loans made pursuant to the Federal Farm Loan Act (Chapter 245, 39 Stats. 330, 12 U. S. C. A. sections 641 et seg, and acts amendatory thereto) is, for reasons stated in the opinion a valid and constitutional tax.

From a judgment of the District Court of Burleigh County, Hon. Fred Jansonius, Judge, plaintiff appeals. AFFIRMED. Opinion of the Court by Nuessle, J. Christianson, J. dissents. Morris and Burke, JJ not participating. Swenson and Grimson, District Judges sitting in their stead.

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In Ernest E. Ostmo, Pltf. and Respt., vs. Alfred Tennyson, Deft. and Applt.

That on an appeal from an order denying a motion for a new trial, this court will not consider a second motion for a new trial made after the appeal and which is not included in the appeal.

That the fact that a witness was one of the bailiffs in charge of the jury during its deliberatitons is not in itself reversible error in the absence of a showing of prejudice to the appellant.

That upon an appeal from an order denying a motion for a new trial, this court does not review any alleged errors not brought to the attention of the trial court upon the hearing of the motion.

That where, upon the sustaining of an objection to questions propounded by one of the litigants this party makes an offer of proof, such offer must be sufficiently definite that the court may know therefrom what facts are sought to be introduced in order to determine whether the proffered testimony has any bearing upon the case.

That in an action to recover damages to a truck, the offending party is not entitled to show, for the purpose of minimizing the damages, that the truck was repaired at no expense to the owner.

That evidence examined, and it is held; that there was sufficient evidence on all debatable issues to require the trial court to submit all these issues to the jury, and the verdict of the jury thereon is controlling.

Appeal from the District Court of Grand Forks County, Hon. F. G. Swenson, Judge.

AFFIRMED.

Opinion of the Court by Burr, Ch. J.